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BARAFF, KOERNER & OLENDER, P.C. OCT 20 1998

ATTORNEYS AT LAW

THREE BETHESDA METRO CENTER, SUITE 640

BETHESDA, MARYLAND 20814-5392

DC (202) 686-3200

MD (301) 986-0500

FAX (301) 986-4844

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ROBERT L. OLENDER*
JAMES A. KOERNER

October 20, 1998

B. JAY BARAFF (Ret)
OF COUNSEL
ROBERT BENNETT LUBIC*

*NOT ADMITTED IN MD

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

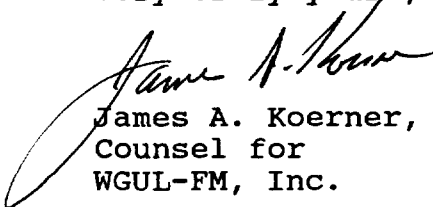
Re: MM Docket No. 98-93

Dear Ms. Salas:

On behalf of WGUL-FM, Inc., there are transmitted herewith an original and four (4) copies of its Comments in the above-referenced rulemaking proceeding.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,


James A. Koerner,
Counsel for
WGUL-FM, Inc.

cc: Mr. Carl J. Marcocci

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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of

1998 Biennial Regulatory
Review – Streamlining of
Radio Technical Rules in
Parts 73 and 74 of the
Commission's Rules

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MM Docket No. 98-93

COMMENTS OF WGUL-FM, INC.

On behalf of WGUL-FM, Inc., these Comments are offered in response to the
Notice of Proposed Rulemaking and Order, FCC 98-117, released June 15, 1998
("NPRM").

1. In particular, these Comments focus upon the five percent (5%) negotiated interference issue. As noted in the NPRM, the five percent (5%) interference could easily be considered "de minimis." The NPRM also acknowledges that some variations of negotiated interference have been permitted in the past. Included are the power increases from 3 kw to 6 kw for grandfathered short-spaced stations, and the permitted election of

Section 73.215 status for stations which, for whatever reasons, voluntarily decided to be limited to actual rather than potentially maximum coverage. The Commission long ago decided to allow immediate gains as against long-term possible negatives.

2. Given the current consolidation of stations, particularly in the major markets, the five percent (5%) allowance means very little. Imagine a Class C station in a DMA serving 500,000 population. The incursion of a suburban Class A station to five percent (5%) of population would mean the Class C station “loses” 25,000 possible listeners. Now, suppose the Class C station’s licensee also owns three (3) other Class C stations in the market. The potential loss of 25,000 listeners on one channel is much less than before. The potential loss has now shrunk from five percent (5%) to one and one-fourth percent (1.25%), since the listeners “lost” on one channel can easily be made up on another channel.

3. The above example, and the Commission’s proposal, assumes uniform distribution of population, a complete falsity. In fact, population distribution tends to be heavier at the core and more sparse at the outlying areas. The outside station would, in all likelihood, only be infringing on the outlying areas. One area of clarification needed is whether the interference level is applied to area or population (NPRM, para. 20). There could be a significant difference.

4. Again, in consideration of the FCC’s current definition of “market” for multiple ownership purposes, a suburban -- or ex-urban -- station might finally be able to be part of the market it desires, at almost no expense to the incumbents in the market.

5. As part of this proceeding the Commission should also reconsider its present assumption that all stations -- except those which have elected Section 73.215 status -- operate at full class facilities. In point of fact, it would be difficult, if not impossible, for many stations, particularly those serving larger markets to construct towers approaching maximum height. We suggest that each existing station operating at less than maximum facilities be given an opportunity, for some limited period of time, to demonstrate that it can be authorized for, and construct, a maximum facility for its class. If it fails to qualify, or to complete construction, it will be in the same class as a Section 73.215 station, forever limited to its present facilities.

6. We recognize the argument that this proposal may lead to AM-ization of the FM band. However, it is extremely unlikely that any FM broadcasters, no matter how savvy, could devise a directional antenna to match the WHOT 10 tower, 2 site AM array done by Myron Jones. At least as of now, such flexibility for FM directional antennae is neither permitted nor possible.

7. The Commission must also keep in mind that this rulemaking cannot be decided in a vacuum. There is a pending proposal for "micro" radio stations in the FM band. To be sure, such micro stations will infringe upon existing FM service at least as much as implementation of the rules proposed in this proceeding. Chairman Kennard has voiced his concern about the "little guys" being able to compete with the "big guys." The five percent (5%) proposal is one possible method to assist the present "little guys."

8. In summary, WGUL-FM, Inc., believes that this proposal simply carries forward previous rule changes that have permitted incursions of one sort or another into other FM stations' service areas. Accordingly, it supports the proposal.

Respectfully submitted,

WGUL-FM, INC.

By: 

James A. Koerner
Its Attorney

October 20, 1998

Baraff, Koerner & Olender, P.C.
3 Bethesda Metro Center
Suite 640
Bethesda, MD 20814
(301) 986-0500

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